REMARKS/ARGUMENTS

Applicants would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office Action, and amended as necessary to more clearly and particularly describe the subject matter that Applicants regard as the invention.

Claim 1 is amended.

Claims 1, 3-5, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higuchi et al. (U.S. Pub. No. 2003/0050050 A1) in view of Na et al. (U.S. Patent No. 7,031,746 B2). Withdrawal of the rejection is respectfully requested for at least the following reasons.

To establish a case of obviousness, the cited references must provide a teaching, suggestion, or reason to substitute [an element or limitation] ... in the prior art. The absence of such a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1579, 42 U.S.P.Q.2d 1378 (Fed. Cir. 1997).

Higuchi et al. does not teach or suggest "wherein the accessing process sequence setting unit determines whether to stop acquiring data from the accessed set site **automatically based upon the process sequences set by the user** when the own apparatus accepts an interrupt request related to other use, while data is acquired from the accessed set site in the data acquiring process sequence" as recited in claim 1. In particular, Higuchi et al. **does not determine automatically whether to stop acquiring data from the accessed set site based on the process sequences set by the user** when the own apparatus accepts an interrupt request while downloading the data. Rather, Higuchi et al. describes a download process of the controller 36 in Fig. 7, and in particular, discloses that the download environment must first satisfy the downloadable condition in step S25 before a download

process for downloading data is executed in step S27 (paragraphs [0075-0078]). Therefore, Higuchi et al. requires that the download condition be satisfied before the download process is executed.

Furthermore, Higuchi et al. is entirely silent with respect to interruptions of an executed download process or handling situations where the download process is interrupted by another use of the device (e.g., incoming or outgoing phone call, incoming or outgoing email, etc.). Na et al. is cited to provide this missing teaching, however, there is no teaching, suggestion, or motivation to modify Higuchi et al. with the teachings of Na et al. or to combine Higuchi et al. with Na et al. More specifically, Higuchi et al. does not teach, suggest, or address the notion of interruptions, that interruptions can occur during an executed download process, or that interruptions can be problematic for its executed download process. Proof that the separate elements exist in the prior art is inadequate to establish obviousness. *Arkie Lures Inc. v. Gene Larew Tackle Inc.*, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997). Moreover, absent some teaching or suggestion in the prior art to combine elements, it is insufficient to establish obviousness by claiming that the separate elements of the invention existed in the prior art. *Id.*

In addition, it is widely accepted that the prior art items themselves must suggest the desirability and thus the obviousness of making the combination without the slightest recourse to the teachings of the patent or application. Without such independent suggestion, the prior art is to be considered merely to be inviting unguided and speculative experimentation which is not the standard with which obviousness is determined. *Amgen, Inc. v. Chugai Pharmaceutical Co. Ltd.*, 927 F.2d 1200, 18 USPQ2d 1016 (Fed. Cir. 1991); *In re Laskowski*, 871 F.2d 115, 117, 10 USPQ2d 1397, 1398 (Fed. Cir. 1989); *In re Dow Chemical Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1532 (Fed. Cir. 1988); *Hodosh v. Block Drug*, 786 F2f at 1143 n. 5., 229 USPQ at 187 n. 4.; *In re Gordon*, 733 F.2d 900, 902, 221

USPQ 1125, 1127 (Fed. Cir. 1985). Thus, one of ordinary skill in the art would not have been motivated to modify Higuchi et al. with the apparent teachings of Na et al. without use of Applicant's application as a guide.

In light of the foregoing, it is respectfully submitted that the present application is in condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 38318.

Respectfully submitted,
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